

No. 20291

In the

# United States Court of Appeals For the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,

*Petitioner,*

vs.

LANE-COOS-CURRY-DOUGLAS COUNTIES BUILDING & CONSTRUCTION TRADES COUNCIL, AFL-CIO; CARPENTERS LOCAL UNION NO. 1273, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, AFL-CIO; CONSTRUCTION & GENERAL LABORERS LOCAL NO. 85, INTERNATIONAL HOD CARRIERS, BUILDING & COMMON LABORERS' UNION OF AMERICA, AFL-CIO; and PLUMBERS & STEAMFITTERS LOCAL NO. 481, UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPE FITTING INDUSTRY OF THE U. S. & CANADA, AFL-CIO,

*Respondents.*

## BRIEF OF CHARGING PARTY AS AMICUS CURIAE

On Petition for Enforcement of an Order of the  
National Labor Relations Board

McCOLLOCH, DEZENDORF & SPEARS

JAMES H. CLARKE

LEWIS K. SCOTT

8th Floor, Pacific Building

Portland, Oregon 97204

*Attorneys for Ramsey-Waite Co., Inc., Amicus Curiae*

FILED

OCT 19 1965

FRANK H. SCHMID, CLERK



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On Petition for Enforcement of an Order of the  
National Labor Relations Board

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## **BRIEF OF CHARGING PARTY AS AMICUS CURIAE**

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### **STATEMENT**

This brief is submitted by the charging party, Ramsey-Waite Co., Inc., pursuant to the written consent of all parties. Rule 18(9)(a).

## QUESTION PRESENTED FOR DECISION

The question is whether there is substantial evidence on the record considered as a whole<sup>1</sup> that respondents induced strikes by neutral employees and coerced persons engaged in commerce to force them to cease doing business with the charging party, a primary employer with whom the respondent Plumbers Union had a labor dispute.<sup>2</sup>

## SUMMARY OF ARGUMENT

This is a flagrant case of unlawful secondary strike action which the evidence established beyond any doubt at all. The Plumbers Union<sup>3</sup> first required a project owner to cancel a direct contract with the charging party by threats and coercion and by “pulling” its members working for another contractor off the job. Thereafter, the Plumbers Union, the Carpenters Union,<sup>4</sup> the Laborers Union<sup>5</sup> and the Trades Council<sup>6</sup> jointly attempted to require a prime contractor to cancel a subcontract with charging party by inducing (and coercing) strike action by the prime contractor’s employees.

1. 29 USC § 160(e).

2. 29 USC §158(b)(4)(i) and (ii)(B); *N.L.R.B. v. Denver Bldg. & Constr. T. Council*, (1951) 341 US 675. Respondents did not except to any of the jurisdictional findings (R 39).

3. Respondent Plumbers & Steamfitters Local No. 481.

4. Respondent Carpenters Local Union No. 1273.

5. Respondent Construction & General Laborers Local No. 85.

6. Respondent Lane-Coos-Curry-Douglas Counties Building & Construction Trades Council, AFL-CIO.



The charges were proved to the hilt, and the Board's order should be enforced.

## **ARGUMENT**

### **Introduction**

The charging party, Ramsey-Waite Co., Inc., (hereafter called Ramsey) sells and installs plumbing equipment, irrigation accessories and supplies in and near Eugene, Oregon (Tr 12). Ramsey's employees rejected the Plumbers Union as their bargaining representative in a Board election held in May, 1963 (Tr 14-17; Pet Exhs 1, 2). The incidents in question occurred shortly after that election.

#### **1. The Bank Job.**

In August, 1963 the United States National Bank of Oregon was constructing a branch office at Seventh and Chambers Streets in Eugene, Oregon (Tr 32; R 21). The general contractor was Gale Roberts Construction Company (Tr 33; R 21) (hereafter called Roberts), which had subcontracted the mechanical work exclusive of the sprinkler system to Stimson Company (R 30) (hereafter called Stimson). Stimson's plumbing employees were members of the Plumbers Union (R 11, 20). Ramsey had been directly engaged by the bank to install the sprinkler system (Tr 35). The branch opening had been arranged for a specific date, and any

delay in completing the project would cause serious financial loss to the bank (Tr 37).

On the morning of August 20 (Tr 43), shortly after Ramsey had commenced its work (R 30), the business manager for the Plumbers Union, Mr. Carmickle (Tr 20, 55), was told by Raymond Quick, a Stimson employee who was a member of the Plumbers Union, that Ramsey employees were working on the jobsite (Tr 50-51, 55). At about 1:30 p.m., Stimson's only employees on the job, Raymond Quick and Warner Dallas, reported sick and left work. The plumbers were "the key to the completion of [the] branch buildings" (Tr 32, 36).

Mr. Carmickle telephoned Mr. Pullen, the bank's assistant cashier and loan officer at its main Eugene branch (Tr 42), and told him

"\* \* \* \* that the Union was a customer of our branch, and \* \* \* that the Union was pulling the men off the job—or had pulled the men off the job at the 7th and Chambers Branch because of the employment of a non-union firm, which he identified as Ramsey-Waite." (Tr 43)

Mr. Pullen immediately called Mr. Kidd, manager of the bank's building and planning department (Tr 31), who arrived at the jobsite early the next morning (Tr 34).

In the morning, Mr. Carmickle again called Mr. Pullen and told him "that the Union men were awaiting word to go back to work. \* \* \* that the non-union personnel were not off the job yet, and therefore the Union men were not going back to work" (Tr 44-45). After discussing the problem, Mr. Kidd advised Mr. Ramsey that despite his personal sympathies, he "had to get [the] job completed \* \* \* in order to meet the deadline" (Tr 37). He asked Mr. Ramsey "to remove his people" from the job (Tr 37). This was done, and the sprinkler system was installed by Stimson's union plumbers, who returned to work within 30 minutes after Ramsey's people left (Tr 38, 39-40; R 30).

## **2. The City Hall Job.**

In January, 1964 the City of Eugene was constructing a new \$2,000,000 city hall. Roberts was the general contractor, and Ramsey had a subcontract for the sprinkler system (Tr 57-58, 63). Roberts' employees included carpenters, laborers and cement finishers (Tr 67, see also 69). The carpenters and laborers were represented by the Carpenters Union and Laborers Union respectively. The Plumbers Union and the Trades Council, through Mr. Carmickle and Mr. Horstrup, secretary of the Trades Council (R 20), had sought to enlist Roberts' aid in their dispute with Ramsey, but Mr. Roberts told them that his contract with Ramsey could not

be cancelled.<sup>7</sup> They led Mr. Roberts to believe that there would be a strike if Ramsey were permitted to do the work (Tr 58-62, 128). Ramsey commenced work on about January 13 (Tr 62). The Trades Council met and at the request of the Plumbers Union sanctioned a picket against Ramsey-Waite at the jobsite (Tr 129-130).

On January 14, the picket appeared (Tr 65-66), bearing a sign stating that the Union's dispute was with Ramsey alone (R 32). Respondents advised their members to decide for themselves whether to pass the picket. After initial uncertainty, they all returned to work; no employee or worker declined to cross the picket line (R 32; Tr 65-66, 71-76, 88-90, 103-104, 112-113, 118). Picketing ceased about noon the next day (R 32; Tr 91).

On January 16, the employees continued to work (Tr 138-139). However, a meeting was called at the Labor Temple for 4:30 p.m. that day (Tr 113). The carpenters, laborers and the cement finishers attended (Tr 113). Mr. Randall called the carpenters to the meeting (Tr 118-119), and members of the Laborers Union attended with Mr. Benson, their business agent (Tr 82-83, 91-92; R 20). Mr. Randall, Mr. Barton, Mr. Softly (financial secretary of the Carpenters Union; Tr 119), and Mr. Willis (secretary of the Oregon State Building

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7. Mr. Randall, the Carpenters' business representative and President of the Trades Council (R 20), also participated in these discussions (Tr 128-129).

Trades Council) were all present (Tr 77-78, 82-83, 91-92; R 20).

Mr. Randall stated that "the meeting was called specifically to tell the carpenters not to cross the picket line" (Tr 79; see also 82). He discussed the Union's constitution, including the provision prohibiting members from crossing a picket line. There would be a picket the next day, and "we could be fined up to a day's wages for going across the picket line" (Tr 105-106, 109). "\* \* \* [I]t was quite a lengthy statement he made, but part of the statement was to shut the job down." (Tr 108).

Mr. Brown, a member of the Laborers Union (Tr 81), testified that Mr. Randall stated that "a fine could be imposed" for crossing the picket line and that "everybody's name on that job was on a list" (Tr 79-80).

Mr. Magee, a member of the Carpenters Union (Tr 87), testified that Randall stated

"\* \* \* that he had the names of all the carpenters on the job \* \* \* He said that he was going to keep them in case he had to refer charges against the men. \* \* \* [H]e read the Bylaws of the Carpenters Union to the carpenters about the fines and the penalties of crossing the picket line." (Tr 93-94)

Mr. Maycumber, the carpenters' foreman, testified:

"It was brought up about him having a list of

the carpenters' names, and that he had hoped that he wouldn't have to do anything with the list, that we would recognize the picket the next morning, and just if we didn't cross the picket line, well, the list would be forgot about." (Tr 119)

Mr. Willis told the meeting

"\* \* \* 'I think Mr. Randall was pretty nice to you fellows for not turning you in.' And if we went through that picket in the morning if there was a picket on the job, he said he will be right to Mr. Randall to turn those names into the International \* \* \*'" (Tr 114)

Mr. Clement, another Carpenters Union member (Tr 102), testified:

"He just had a list of all the names of everybody on the job; and if we honored the picket the next day, he would like to throw the list away. And if we didn't honor it, he would see to it that we were punished accordingly or fines, discharged from the Union, and what not; whatever they had to do." (Tr 106)

"Q Now, what did he say in respect to punishment, if anything? Mr. Randall I am talking about.

A He just made the statement about there would be a fine of \$25 a day—I mean wages per day the day we went across the picket line.

\* \* \* \* \*

A He said that he would see to it that we were fined, we would get the limit or something, but I don't know just how that went." (Tr 109)

Mr. Willis also stated that

"\* \* \* if he were us, that he would—would stay away from the job and that he just wouldn't cross the picket line." (Tr 80)

"\* \* \* that the only way we were to get this thing settled was to stay away from the picket line, not to cross it." (Tr 94)

"He thought he should shut the job down and bring somebody to their knees. \* \* \*" (Tr 107, see 108)<sup>8</sup>

Picketing was resumed at 8:00 a.m. on January 17 in the presence of Mr. Randall and Mr. Horstrup (Tr 107). Roberts' laborers, carpenters and cement finishers refused to cross the picket line (Tr 67-68, 80-81). However, Ramsey's employees continued to work. The work stoppage continued for two weeks, at a daily loss to Roberts of \$200, and Roberts' employees returned to work only after Ramsey's men had finished the job (Tr 67-68, 81).

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8. The foregoing facts are from the testimony of Mr. Roberts, Mr. Brown, Mr. Magee, Mr. Clement, Mr. Stevenson, and Mr. Maycumber. Respondents' witnesses, Mr. Randall and Mr. Barton, were understandably less specific, but their testimony contains significant concessions (see Tr 133-134, 147-148).

Mr. Brown, a member of the Laborers Union (Tr 81), testified that he refused to cross the line "based upon what was said at that meeting" (Tr 84). Mr. Maycumber, the carpenters' foreman, testified that his decision to refuse to work was based on what was said at the meeting and particularly the threat of fines of a "day's pay for each time they crossed the picket line" (Tr 122).

### **3. The Evidence Supported the Board's Findings.**

a. Respondents did not except to the trial examiner's findings with respect to the bank job except to the obvious conclusions that the Plumbers Union induced and encouraged Raymond Quick to leave his job for Stimson (R 31) and threatened and coerced the bank directly to put Ramsey off the job (R 31).<sup>9</sup> Raymond Quick's testimony that he suddenly developed conscientious scruples against working with Ramsey employees was unbelievable at best and was contradicted by Carmickle's own statements to Mr. Pullen that he had "pulled" Stimson's employees off the job and that they would not return until Ramsey's men had left.

There was abundant evidence to support the finding that the Plumbers Union induced Stimson's employees

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9. The testimony (credited by the trial examiner and not excepted to by Respondents (R 30)) that Mr. Carmickle told Mr. Pullen he had "pulled" Stimson's union plumbers from the job also showed that the Plumbers Union caused the walkout of Stimson's employees.



to leave their work (i.e., “pulled them off the job”) and coerced the bank directly by telling Mr. Pullen that it had done so and that Ramsey must be removed before they would return to work (R 31). This conduct caused Ramsey to be thrown off the job by the bank and violated §§ 8(b)(4)(i) and (ii)(B).

*Hod Carriers Union (Gilmore Construction Co.)*  
(1960) 127 NLRB 541, 46 LRRM 1043, enf’d  
(CA 8 1960) 285 F2d 397, cert den (1961) 366  
US 903

*Plumbers & Pipefitters Union (Bomat Plumbing & Heating)* (1961) 131 NLRB 1243, 48 LRRM 1245, enf’d (CA 2 1962) 299 F2d 497

*Operating Engineers Union (Layne-Western Co.)*  
(1961) 133 NLRB 208, 48 LRRM 1627, enf’d  
(CA 8 1963) 317 F2d 638

*Plumbers & Pipefitters Union (Arthur Venneri Co.)*  
(1962) 137 NLRB 828, 50 LRRM 1266, enf’d  
(CA DC 1963) 321 F2d 366, cert den (1963) 375  
US 921

**b.** Respondents’ pretense of establishing a primary picket line at the city hall jobsite under *Sailor’s Union of the Pacific (Moore Dry Dock Co.)* (1950) 92 NLRB 547, 27 LRRM 1108 was disproved by evidence of events which occurred away from the picket line. Respondents’ threats to fine and penalize union members who continued to work for Roberts through the picket line vio-

lated the statute, whether or not the picketing was otherwise lawful.<sup>10</sup>

The evidence established that neutral employees refused to work—not by reason of their own individual choice—but as a result of respondents' threats of reprisals. When they were advised on January 14 that the decision to work across the picket line was a matter of individual choice, they all worked, and they continued to work behind the picket line the following day. Respondents then called the neutral employees to a meeting, where they were told that their names were on a list which would be forgotten "in view of the confusion" if they would respect the picket line thereafter, but that they would be subject to fines and disciplinary action if they continued to work. As a result, they refused to cross the picket line the following day and testified that they did so because of what was said at the meeting. A more flagrant example of unlawful secondary activity could scarcely be stated. The primary picket had merely been changed into a signal picket for neutral employees, one intended to shut down the project and coerce the prime contractor to cease doing business with Ramsey. This conduct was a gross violation of the Act.

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10. *Teamsters, AFL (Crump, Inc.)* (1955) 112 NLRB 311, 36 LRRM 1012  
*Hod Carriers Union (Gilmore Construction Co.)*, supra, (1960) 127 NLRB 541, 46 LRRM 1043, enf'd (CA 8 1960) 285 F2d 397, cert den (1961) 366 US 903  
*Bricklayers Union (J. Hilbert Sapp, Inc.)* (1958) 119 NLRB 1174, 41 LRRM 1335

*Teamsters Union (Riss & Co., Inc.)* (1961) 130 NLRB 943, 47 LRRM 1403, enf'd (CA 3 1962) 300 F2d 317

*Hod Carriers Union (Gilmore Construction Co.)*, supra, (1960) 127 NLRB 541, 46 LRRM 1043, enf'd (CA 8 1960) 285 F2d 397, cert den (1961) 366 US 903

Warnings to neutral employees to respect the primary picket line at a common jobsite is inducement and encouragement of unlawful secondary strike action,<sup>11</sup> particularly where it is accompanied by threats of union disciplinary action.

*Carpenters Union (Midwest Homes, Inc.)* (1959) 123 NLRB 1806, 44 LRRM 1233, enf'd (CA 7 1960) 276 F2d 694

*Carpenters Union (Associated General Contractors)* (1958) 120 NLRB 1658, 42 LRRM 1234

#### **4. Respondents are Jointly Responsible for the Unlawful Secondary Activities.**

Respondents, as participants in a joint venture and

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11. *International B. of E. W. v. National L. R. Bd.*, (1951) 341 US 694 at 701-702:

“\* \* \* The words ‘induce and encourage’ are broad enough to include in them every form of influence and persuasion. \* \* \*”

by reason of their concerted action, are all responsible for the unfair labor practices.

*Retail Clerks' Union (Retail Fruit Dealers' Assn.)*  
(1956) 116 NLRB 856 at 862, 38 LRRM 1323 at  
1325-1326, enf'd (CA 9 1957) 249 F2d 591

### **5. The Order was Proper and Should Be Enforced as Written.**

The order, which extends beyond the neutral employers referred to in the evidence, is necessary and is in a form repeatedly enforced by the courts to remedy unlawful secondary activities. The aggravated circumstances of this case justify broad relief. Particularly is this true in view of respondents' insistence that they would not permit Ramsey to work, even if it hired union help, "because that would be giving Ramsey-Waite privileges that the other plumbing contractors didn't have" (Tr 61). Thus, these were not isolated instances of such action, but are examples of the uniform policy of respondents.

*N.L.R.B. v. International Union of Operating Engineers, L. 571*, (CA 8 1963) 317 F2d 638 at 643-644

*N.L.R.B. v. International Hod Carriers, etc.*, (CA 8 1960) 285 F2d 397 at 403-404

*Local No. 5, United Ass'n of Journeymen, etc. v. N.L.R.B.*, (CA DC 1963) 321 F2d 366 at 371-372

## CONCLUSION

The record established that respondents engaged in flagrant and aggravated secondary activities in an effort to bring the charging party, whose employees had rejected the Plumbers Union, "to their knees". They did so by inducements to neutral employees and coercion against neutral employers designed and intended to require project owners and contractors to cease doing business with the charging party.

The Board's order should be enforced.

Respectfully submitted,

McCOLLOCH, DEZENDORF & SPEARS  
JAMES H. CLARKE  
LEWIS K. SCOTT

*Attorneys for Ramsey-Waite Co., Inc.  
Amicus Curiae*

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

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Attorney